

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 89-326  
MM Docket No. 89-327

In the Matter of

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|--|---------|
| Amendment of Section 73.202(b),              | RM-5138 |
| Table of Allotments,                         | RM-6315 |
| FM Broadcast Stations.                       | RM-6448 |
| (Carolina Beach, Havelock, Hertford,         | RM-6765 |
| Jacksonville, Fair Bluff, Wilmington,        | RM-6779 |
| Shallotte and Longwood, North                | RM-6782 |
| Carolina, and Murrells Inlet,                | RM-6836 |
| Bucksport, Darlington, Loris, St.            | RM-6840 |
| Stephen, North Myrtle Beach,                 | RM-7304 |
| Surfside Beach, Johnsonville,                | RM-7305 |
| Scranton, Kure Beach, Georgetown)            | RM-7306 |
| and Stallville, South Carolina) <sup>1</sup> | RM-7307 |
|  | RM-7308 |

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: January 2, 1992; Released: January 15, 1992

By the Commission:

1. The Commission has before it a complex daisy chain of allotment proposals and counterproposals involving twenty communities in North and South Carolina. We ordered consolidation of these proposals and counterproposals by *Memorandum Opinion and Order* (MM Docket No. 84-231) ("*Consolidation Order*"), 5 FCC Rcd 931 (1990), *pet. for recon. pend., appeal dismissed sub nom. Marine Broadcasting Corporation v. FCC and United States*, No. 90-1124 (D.C. Cir. June 4, 1990). On March 14, 1990, the Commission released a public notice ("Public Notice") requesting comment on the proposals and counterproposals discussed in the *Consolidation Order*.<sup>2</sup> The Appendix sets forth a list of commenters.

**BACKGROUND**

2. On February 1, 1990, the Commission adopted the *Consolidation Order* in response to a decision of the United States Court of Appeals in *Reeder v. FCC*, 865 F.2d 1298 (D.C. Cir. 1989). The court, in response to an appeal filed by Marine and two other petitioners, rejected three policies adopted in the course of MM Docket No. 84-231,<sup>3</sup> including a "no substitutions" policy which prohibited allotment proposals involving channel substitutions of a Docket 84-231 allotment unless the petitioner demonstrated a compelling need for the substitution or Commission error.<sup>4</sup> Acting under the "no substitutions" policy, the Commission had previously rejected Marine's petition for rule making. Pursuant to the *Reeder* decision, the Commission issued the *Consolidation Order* stating that it would now consider Marine's petition for rule making.<sup>5</sup> While Marine's appeal was pending, a number of proposals and counterproposals were filed, creating a complex daisy chain of mutually exclusive proposals. In the *Consolidation Order*, the Commission determined that it would generally consolidate for consideration proposals filed after the initial comment date in Docket 84-231. Further, the Commission declined to consolidate new proposals with mutually exclusive proposals already subject to notice and comment or treated as counterproposals in another proceeding, since to do otherwise would obviate their cutoff protection.

3. Under these guidelines, the Commission consolidated for consideration four docketed proceedings. In two proceedings, MM Docket Nos. 86-65 and 88-194, the Commission had made or proposed allotments conditioned on the denial of Marine's proposal. In another two proceedings, MM Docket Nos. 89-326 and 89-327, the Commission proposed allotments which, as a result of the filing of counterproposals, became mutually exclusive with other proposals in the Marine daisy chain.

4. The Commission has carefully examined all pleadings filed in this proceeding. In addition, the Commission staff conducted extensive engineering analyses to determine whether the use of alternate channels would permit the accommodation of otherwise mutually exclusive proposals, and found that alternate channels are available for several of the proposals. We deal with the proposals as follows. We deny a proposal to allot a channel to Stallville, South Carolina, on the grounds that Stallville is not a community for allotment purposes. We also deny a proposal to allot a channel to Longwood, North Carolina, concluding that there is not a timely expression of interest in an allotment at the community. Next, we grant an uncontested request to upgrade an existing channel at Surfside Beach, South Carolina. Then, we examine the conflicting proposals to upgrade channels at Jacksonville, Havelock and Hertford, North Carolina. We determine that by the use of an alternate channel at Jacksonville, all

<sup>1</sup> The communities of Havelock, Hertford, Jacksonville, Fair Bluff, Wilmington, Murrells Inlet, Bucksport, Darlington, Loris, St. Stephen, North Myrtle Beach, Surfside Beach, Johnsonville, Scranton, Georgetown and Stallville have been added to the caption of this proceeding. See Public Notice No. 1809 (March 14, 1990), *corrected* August 16, 1990.

<sup>2</sup> Because of the complexity of this proceeding, we deviated from our practice of permitting only reply comments in response to a public notice and allowed parties to submit pleadings responsive to the reply comments. We will refer to

comments filed in response to the Public Notice as responsive comments, and to comments filed in reply to responsive comments as responsive reply comments.

<sup>3</sup> MM Docket No. 84-231 proposed the allotment of nearly seven hundred FM channels designed to use the additional spectrum made available by changes in the Commission's technical rules in BC Docket No. 80-90.

<sup>4</sup> See *Consolidation Order*, 5 FCC Rcd at 931.

<sup>5</sup> *Id.* at 932.

three communities can receive upgraded services. Conflicts between proposals to allot a first local FM transmission service to Carolina Beach, North Carolina, and to upgrade existing channels at Shallotte, North Carolina, are then explored. We determine that the public interest is best served by allotting a channel to Carolina Beach, upgrading one existing station at Shallotte, and allotting an additional channel to Shallotte to accommodate expressions of interest in serving that community. We then examine a proposal to allot a first local transmission service to Bucksport, South Carolina, and grant that proposal after determining that Bucksport is a community for allotment purposes. Finally, we examine the remaining daisy chain of proposals which requires a choice between allotting a fourth local transmission service to Georgetown, South Carolina, or granting upgrades to existing stations at North Myrtle Beach and Darlington, South Carolina. We determine that the public interest would best be served by the grant of upgrades at North Myrtle Beach and Darlington.

### THE PROPOSALS

#### Stallville, South Carolina (RM-6840)

5. We will deny the proposal to allot a channel to Stallville on the grounds that Stallville is not a community for allotment purposes.

6. *Comments.* RJM requested the allotment of Channel 292A to Stallville as that community's first local transmission service. In responsive comments, RJM requests that the Commission alternatively allot Channel 292A to Ladson, South Carolina, as that community's first local service. Ladson is a Census Designated Place (CDP) with a population of 13,246 persons according to the 1990 *Rand McNally Commercial Atlas and Marketing Guide* ("1990 Commercial Atlas"), whereas Stallville's population is 300 persons. RJM notes that Channel 292A could be allotted to Ladson at the site proposed for Stallville.

7. RCLP, licensee of Station WDAR-FM (formerly WMWG-FM), Channel 288A, Darlington, South Carolina, and proponent of the Darlington channel substitution, suggests that Channel 292A could be allotted to Stallville with a site restriction, thereby eliminating a conflict between Stallville and Ogden's proposal to substitute a channel at St. Stephen, if Stallville is found to be a community for allotment purposes. In responsive reply comments, Ogden, proponent of the North Myrtle Beach, Loris and St. Stephen channel substitution proposal, supports RCLP's suggested solution.

8. In responsive reply comments, RJM argues that the Ladson proposal does not constitute a counterproposal because no site change is necessary for the channel, and therefore no other proposals would be precluded. RJM states that it accepts RCLP's proposed site restriction.

9. *Discussion.* We conclude that Stallville is not a community for allotment purposes. The Commission defines a "community" as a geographically identifiable population grouping. Generally, if a population grouping is incorporated or listed in the United States Census, we will

presume that the area is a community for allotment purposes. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d at 101. Stallville is neither incorporated nor listed in the census reports. If an area is not incorporated or listed in the census, the proponent of the allotment must show the place to be a geographically identifiable population grouping. *Id.* RJM has submitted no such evidence. Therefore, we conclude that Stallville does not constitute a community for allotment purposes, and we reject RJM's proposal to allot a channel to Stallville.

10. We find that RJM's request to allot Channel 292A to Ladson is an untimely counterproposal. The Appendix to all allotment *Notices of Proposed Rule Making* states that counterproposals must be advanced in initial comments and cannot be advanced in reply comments, and indicates that untimely counterproposals will not be considered. RJM advanced the Ladson proposal in responsive comments, after the initial comment deadline in this proceeding. Therefore, we will not consider the Ladson proposal in this proceeding. However, because the actions taken in this proceeding do not preclude consideration of RJM's Ladson proposal, we direct the Commission's staff to initiate further proceedings proposing the allotment of Channel 292A to Ladson after this *Report and Order* becomes effective.

#### Longwood, North Carolina (RM-6779)

11. We will deny the proposal to allot a channel at Longwood, as there is not a timely expression of interest in an allotment at the community.

12. *Comments.* GSM proposed the allotment of Channel 235A to Longwood as that community's first local FM transmission service, and stated its intention to apply for the channel, if allotted. The Longwood *Notice* noted that Longwood is a town of 250 people, and requested GSM to present evidence that Longwood is a community for allotment purposes. In response, GSM claims that Longwood has a post office, churches and business establishments, and that Longwood's economy is based on agriculture and timber. GSM submits an article from a North Myrtle Beach, South Carolina, newspaper discussing Longwood's history. GSM argues that Longwood's population has grown, but that new population figures are unavailable until the release of the 1990 Census.<sup>6</sup>

13. Jennings, licensee of Station WDZD-FM, Channel 228A, Shallotte, North Carolina, opposes the Longwood allotment because it conflicts with the allotment of Channel 233C3 to Shallotte necessary to upgrade Jennings' station. Jennings argues that Longwood does not have a sufficient population to constitute a community, but suggests in the alternative that if Longwood is found to be a community, Channel 237A could be allotted to Longwood.

14. In responsive comments, GSM withdraws its expression of interest in the Longwood allotment. We accept GSM's withdrawal.<sup>7</sup>

15. In responsive reply comments, Longwood Broadcasting for the first time states its interest in applying for the Longwood allotment. Longwood Broadcasting argues

<sup>6</sup> GSM also filed untimely reply comments in response to the Longwood *Notice*. Because GSM fails to provide good cause for the late filing, we will not consider GSM's reply comments in

this proceeding.

<sup>7</sup> Longwood Broadcasting moved to strike GSM's withdrawal, arguing that GSM's withdrawal constitutes a written *ex parte*

that its expression of interest should be recognized because Channel 237A could be allotted to Longwood without affecting any other proposal. Longwood Broadcasting cites a number of cases for the proposition that the Commission permits expressions of interest in reply comments when no prejudice to other parties is present.

16. Longwood Broadcasting also contends that our policy of refusing to accept late-filed expressions of interest in an allotment proceeding is inconsistent with Section 73.3525(b)(1) of the Commission's rules and Section 307(b) of the Communications Act, as amended.<sup>8</sup> Longwood Broadcasting notes that Commission rule 73.3525(b)(1) requires the Commission to provide the opportunity for another party to take the place of a party withdrawing its application for a facility in a comparative hearing in order to ensure that the community is not deprived of local service for failure to pursue an application. In this instance, Longwood Broadcasting argues, its expression of interest must be accepted in order to protect the potential provision of a first local service to Longwood.

17. Pro filed a motion to strike Longwood Broadcasting's expression of interest. Pro is the licensee of Station WXYZ-FM, Channel 265A, Fairmont, North Carolina, and the proponent of a proposal in MM Docket No. 90-32 to substitute Channel 265C2 for Channel 265A at Fairmont and modify its authorization for Station WXYZ-FM to specify the higher powered channel, and to substitute Channel 264A for Channel 265A at Andrews, South Carolina, and Channel 263A for Channel 264A at Charleston, South Carolina, to accommodate the Fairmont substitution. Pro notes that its proposal is mutually exclusive with a proposal in MM Docket No. 90-32 to allot Channel 264A to Little River, South Carolina. When GSM withdrew its expression of interest in the Longwood allotment, Pro proposed that Channel 237A could be allotted to Little River. This option was previously precluded by the proposed use of Channel 237A at

contact because GSM failed to submit a certificate of service pursuant to Section 1.420(c) of the Commission's rules. GSM maintains that a petitioner need not serve a withdrawal on other parties, and argues that the withdrawal would not constitute an *ex parte* contact because it does not make a presentation on the merits. GSM notes that its withdrawal was served on other parties as an attachment to the filing of two parties in MM Docket No. 90-32. In response, Longwood Broadcasting argues that GSM's procedural defect cannot be cured by the attachment of its statement on other parties' pleadings.

We will not dismiss GSM's withdrawal. Dismissal of an *ex parte* pleading is a measure designed to create a disincentive for the filing party to submit such pleadings since the pleading is not considered in the proceeding, and, therefore, the party's participation in the proceeding may be negated. In this instance, dismissal of GSM's withdrawal would be a meaningless gesture, for GSM is clearly no longer interested in the outcome of this proceeding. Furthermore, no parties will be prejudiced by consideration of GSM's pleading, as all parties to this proceeding were made aware of GSM's withdrawal.

<sup>8</sup> Commission rule 73.3525(b)(1) permits the withdrawal of competing applications which specify different communities prior to the Commission making a 307(b) determination as to which application would better serve the public interest. The rule states that if it is determined that the withdrawal would impede achievement of a fair, efficient and equitable distribution of radio service among the states and communities, the

Longwood. Pro argues that the precedent cited by Longwood Broadcasting is inapposite to the instant case. Pro claims that the Commission's Public Notice of March 14, 1990, only permitted the filing of pleadings addressing the proposals consolidated in MM Docket Nos. 89-326 and 89-327, and not additional expressions of interest. Pro argues that Longwood Broadcasting provides no explanation for why it failed to file its expression of interest in response to the Longwood *Notice*, released in 1989.<sup>9</sup> Finally, Pro argues that Commission rule 73.3525(b)(1) applies only to assignment proceedings and not in the rule making context. Pro claims that rules used in assignment proceedings have no application in the rule making context.

18. In response, Longwood Broadcasting argues that its expression of interest, while not timely filed in response to the Longwood *Notice*, should be accepted because it was timely filed in response to the Public Notice. Longwood Broadcasting also argues that the Longwood proposal would be uncontested, and therefore acceptable, if proposals in conflict are denied due to conflicts with other proposals in this proceeding. Longwood Broadcasting disputes Pro's arguments concerning Commission rule 73.3525(b)(1), arguing that the purpose of the rule is to permit the Commission to ensure the fair, efficient and equitable distribution of facilities pursuant to Section 307(b). It claims that since a Section 307(b) analysis generally takes place in the rule making context, Commission rule 73.3525 should apply to allotment proceedings as well.

19. In responsive comments, Beach argues that if Longwood Broadcasting's expression of interest is accepted, the Commission could allot Channel 237A to Longwood without precluding any other proposal. Jennings notes in responsive reply comments that it will withdraw its proposal to allot Channel 237A to Longwood if there is no expression of interest in the channel.

Commission can provide further opportunity for the filing of applications by other interested parties specifying the same facilities proposed in the withdrawn application. This section applies only in those circumstances in which applicants facing comparative consideration pursuant to Section 307(b) agree to procure the withdrawal of one of the competing applications.

<sup>9</sup> Pro alleges that Longwood Broadcasting may have filed its expression of interest in order to block Pro's proposal in MM Docket No. 90-32. Longwood Broadcasting denies Pro's allegations, and requests an inquiry to determine if Pro offered GSM consideration in excess of actual and legitimate expenses in exchange for GSM's withdrawal.

We will not further investigate the conduct of Pro or Longwood Broadcasting. Neither party has offered evidence which establishes a case of abuse. The mere fact that Longwood Broadcasting submitted a late-filed expression of interest does not indicate that it is attempting to interfere with Pro's proposal in MM Docket No. 90-32. Furthermore, the Commission's rules limiting the amount of consideration that can be paid for the withdrawal of a proposal were not in effect at the time of GSM's withdrawal. See *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuse of the Commission's Processes*, 5 FCC Rcd 3911 (1990), *pet. for recon. denied*, 6 FCC Rcd 3380 (1991).

20. *Discussion.* We conclude that there is not a timely expression of interest in an allotment at Longwood. The Commission generally requires parties to file expressions of interest in an allotment before the expiration of the initial comment date. We have stated:

Although the Commission does not require that every potential applicant for a channel participate in the allotment process, failure to participate places potential applicants at risk that no party will file a timely expression of interest or that a party may withdraw its expression of interest. Acceptance of late-filed comments supporting an allotment proposal is limited to situations where there is no opposition to the proposal and where there would be no adverse impact on another pending proposal.

*Memorandum Opinion and Order (Moscow, Ohio; Paris, et al., Kentucky)*, 5 FCC Rcd 927 (1990). In *Amor Family Broadcasting Group v. FCC*, 918 F.2d 960 (D.C. Cir. 1990), the court affirmed the Commission's refusal to consider an untimely filed expression of interest in an allotment where acceptance would cause an adverse impact on a pending proposal. The court acknowledged that the Commission's refusal to accept the late filing resulted in the denial of a first local service to the community, noting, "However, while provision of first local service is a Commission priority [citation omitted], it cannot be sought at the expense of all procedural requirements." 918 F.2d at 963. The deadline for expressions of interest in the Longwood proposal was September 25, 1989, the cut-off established in the Longwood *Notice* for initial comments. Longwood Broadcasting did not file its expression of interest until April 13, 1990.<sup>10</sup> Longwood Broadcasting offers no explanation as to why it was unable to timely file an expression of interest. Second, with respect to Longwood's claim that its expression of interest should be accepted because its proposal is, for all practical purposes, uncontested, a Commission staff engineering analysis confirms that Channel 237A could be allotted to Longwood without precluding any proposals in this proceeding. However, the allotment of either Channel 235A or Channel 237A to Longwood could have precluded consideration of Pro's timely filed counterproposal in MM Docket 90-32. We note that the filing deadline for initial comments in MM Docket 90-32 was March 29, 1990, well before Longwood Broadcasting filed its expression of interest in the Longwood allotment. Accordingly, because acceptance of Longwood Broadcasting's late-filed expression of interest would prejudice proposals timely filed in MM Docket No. 90-32, we consider Longwood Broadcast-

ing's late-filed expression of interest contested and, therefore, unacceptable in this proceeding. Our action declining to allot a channel to Longwood removes potential conflicts with the Loris substitution necessary to accommodate Ogden's proposed upgrade of its North Myrtle Beach station and Jennings' counterproposal to substitute Channel 233C3 for Channel 228A at Shallotte.

21. Commission rule 73.3525 does not pertain to this proceeding. This rule, by its terms, applies to assignment proceedings and not to allotment proceedings. In fact, the rule in FM allotment proceedings is that, absent a timely expression of interest in use of the channel, the channel will not be allotted and the proceeding will be dismissed. See *Amor Family Broadcasting Group, supra*. Indeed, nearly ten years ago, we rejected the type of delayed participation supported by Longwood Broadcasting. In BC Docket No. 80-130, the Commission considered, and ultimately rejected, adoption of a procedure in which the Commission would consider the preclusive effects of a proposed allotment and, if preclusion was significant, would provide a time period for interested parties in affected communities to express interest in having the channel allotted to the precluded community. The Commission determined that such a process would be of little practical value and "could raise the possibility of obstructionist tactics." *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d at 94-95.<sup>11</sup>

#### Surfside Beach, Johnsonville, and Scranton, South Carolina (RM-6448)

22. Jones, licensee of Station WYAK(FM), Channel 276A, Surfside Beach, requests the substitution of Channel 276C2 for Channel 276A at Surfside Beach, the modification of its license for Station WYAK(FM) accordingly, and, to accommodate the Surfside Beach upgrade, the substitutions of Channel 300A for Channel 286A at Johnsonville and Channel 286A for Channel 275A at Scranton. In responsive and responsive reply comments, Jones states that although it prefers a Class C2 channel, it will accept the substitution of Channel 276C3 for Channel 276A at Surfside Beach. A Class C3 channel would not require channel substitutions at Johnsonville or Scranton and, therefore, would not be mutually exclusive with any other proposal.

23. An engineering analysis confirms that Channel 276C3 can be substituted for Channel 276A at Surfside Beach.<sup>12</sup> We believe the public interest would be served by the substitution of Channel 276C3 for Channel 276A at Surfside Beach, and the modification of the license of Station WYAK(FM) accordingly, in order to provide that

<sup>10</sup> Contrary to Longwood Broadcasting's claims, the Public Notice did not reopen a period for interested parties to submit additional expressions of interest. Instead, it provided a time period for the filing of pleadings addressing the counterproposals and responsive pleadings. See *Consolidation Order*, 5 FCC Rcd 931 at n. 12.

<sup>11</sup> Even if Commission rule 73.3525(b)(1) were applied to this proceeding, we could not determine whether withdrawal of GSM's expression of interest in the Longwood allotment would unduly impede achievement of a fair, efficient, and equitable distribution of radio service, without further notice and comment proceedings. The termination of MM Docket No. 90-32 in *Report and Order (Fairmont, North Carolina, Andrews et al., South Carolina)*, 6 FCC Rcd 4285 (All. Br. 1991), however,

permits consideration of the Longwood proposal. In that proceeding, the Commission staff granted Pro's request to upgrade its facility at Fairmont, North Carolina, and to substitute channels at Andrews and Charleston to accommodate the upgrade. In addition, the staff dismissed a conflicting proposal to allot a channel to Little River, South Carolina. Therefore, consideration of the Longwood proposal has not been precluded. Accordingly, we direct the staff to initiate further proceedings seeking comments on the allotment of Channel 235A to Longwood.

<sup>12</sup> Coordinates for Channel 276C3 at Surfside Beach are 33-43-00 and 78-52-00, with a site restriction of 15.8 kilometers (9.8 miles) northeast to avoid a short-spacing to Station WSON's construction permit (BMPH-901214IB), Channel 275A, Scranton, South Carolina. Because the petition which resulted

community with a wide area FM service. Therefore, we will grant Jones' petition as modified. This removes any conflict between Jones' proposal and the Bucksport proposal, and Jones' proposal and the Murrells Inlet substitution.

**Jacksonville, Fair Bluff, Wilmington, Havelock and Hertford, North Carolina (RM-5138, RM-6315 and RM-7304)**

24. We now examine conflicting proposals to upgrade existing stations at Jacksonville, Havelock and Hertford. A Commission staff engineering analysis has confirmed that through the use of an alternate channel at Jacksonville, which is available due to a channel substitution at North Myrtle Beach, South Carolina, we can accommodate the three proposals without the necessity of comparatively considering the merits of each.

25. Marine, licensee of Station WXQR-FM, Channel 288A, Jacksonville, North Carolina, requests the substitution of Channel 287C2 for Channel 288A at Jacksonville and the modification of its license for Station WXQR-FM accordingly, and the substitutions of Channel 299A for Channel 287A at Fair Bluff, North Carolina, and Channel 283A for Channel 287A at Wilmington, North Carolina, to accommodate the Jacksonville substitution. Three timely petitions for rule making conflict with Marine's petition. First, G&M filed a petition for rule making proposing the allotment of Channel 300C2 to Bucksport, South Carolina, as that community's first local transmission service. The Bucksport proposal is mutually exclusive with the Fair Bluff component of Marine's proposal. Second, Musicradio, licensee of Station WMSQ(FM), Channel 285A, Havelock, North Carolina, filed a petition for rule making proposing the substitution of Channel 286C2 for Channel 285A at Havelock and the modification of its license accordingly. The Havelock upgrade is mutually exclusive with the Jacksonville upgrade. Third, Maranatha, permittee of Station WKJE(FM), Channel 285A, Hertford, North Carolina, requests the substitution

in the allotment of Channel 276C3 at Surfside Beach was filed prior to October 2, 1989, Jones may avail itself of the provisions of Section 73.213(c)(1) with respect to the allotment coordinates for Channel 275A at Scranton. Section 73.213(c)(1) permits the acceptance of applications which specify the minimum distance separation requirements in existence prior to the increase in power for Class A stations to 6 kW, where the channel was also allotted under the same mileage separation requirements.

<sup>13</sup> Musicradio's proposal was the subject of a *Notice of Proposed Rule Making*, 51 Fed. Reg. 6767 (All. Br. 1986), and granted in *Report and Order*, 2 FCC Rcd 3319 (All. Br. 1987), in MM Docket No. 86-65, but conditioned upon the outcome of Marine's appeal in *Reeder v. FCC*, 865 F.2d 1298 (D.C. Cir. 1989). The Hertford proposal was the subject of a *Notice of Proposed Rule Making*, 3 FCC Rcd 2695 (Pol. and Rules Div. 1988), in MM Docket No. 88-194. Both proceedings were vacated in the *Consolidation Order* (MM Docket No. 84-231), 5 FCC Rcd 931 (1990).

Marine offered a timely counterproposal in MM Docket No. 86-65, suggesting that the Commission substitute Channel 262C2 at Havelock rather than Channel 286C2. Musicradio opposed this counterproposal and it was therefore rejected in the *Report and Order*. In their respective comments, Marine, Maranatha and Musicradio urge reconsideration of this counterproposal. Roy R. Grant, Jr. ("Grant"), proponent of a counterproposal in

of Channel 285C2 for Channel 285A at Hertford and the modification of its permit accordingly. The Hertford upgrade can be achieved only if the Havelock substitution is granted.<sup>13</sup>

26. *Comments.* In its responsive comments, Maranatha argues that the Commission could sever the Marine, Maranatha and Musicradio proposals from the rest of the proceeding by using the original site coordinates proposed by G&M for the Bucksport allotment. Use of these coordinates would remove the conflict between the Fair Bluff and Bucksport proposals, which, in turn, would sever the Marine, Maranatha, and Musicradio proposals from the rest of the daisy chain. In responsive reply comments, Maranatha argues that if the Commission performs a comparative analysis of the Marine, Musicradio and Maranatha proposals, the Commission should grant the channel substitutions at Havelock and Hertford. Maranatha claims that adoption of the Havelock and Hertford channel upgrades will provide those communities with their first wide area FM services, whereas adoption of the Jacksonville proposal will provide that community with its third Class C2 or better allotment. Furthermore, claims Maranatha, if the Bucksport proposal remains mutually exclusive with the Fair Bluff substitution required for the Jacksonville upgrade, denial of Marine's proposal will permit the allotment of a first local service to Bucksport.

27. In responsive reply comments, G&M suggests allotting Channel 288C2 to Jacksonville instead of Channel 287C2. According to G&M, allotment of Channel 288C2 would eliminate the need to substitute a channel at Fair Bluff, thereby removing the conflict between that aspect of Marine's proposal and G&M's Bucksport proposal. Furthermore, claims G&M, this plan would permit adoption of the Musicradio and Maranatha proposals.

28. *Discussion.* A Commission staff engineering analysis indicates that Channel 288C2 can be allotted to Jacksonville with a site restriction<sup>14</sup> if Channel 283A is substituted

MM Docket No. 88-40 that is mutually exclusive with the allotment of Channel 262C2 at Havelock, opposes consideration of the counterproposal.

While adoption of this counterproposal could result in the accommodation of the Marine, Maranatha and Musicradio proposals, the Marine proposal would remain mutually exclusive with G&M's proposal to allot a channel to Bucksport, South Carolina. As shown *infra*, we can accommodate the interests of Marine, Musicradio and Maranatha, and remove the conflict between the Marine and G&M proposals by using an alternative arrangement of allotments. Therefore, we will not consider the substitution of Channel 262C2 at Havelock.

Maranatha and Musicradio also filed petitions for reconsideration of the *Consolidation Order*. The resolution of this proceeding renders these pleadings moot, and they are hereby dismissed.

<sup>14</sup> Under the mileage separation rules adopted in MM Docket No. 88-375, Channel 288C2 can be allotted to Jacksonville at site coordinates of 34-31-45 and 77-27-49, with a site restriction of 24.5 kilometers (15.2 miles) south to avoid a short-spacing to a construction permit for Station WRSF-FM, Channel 289C, Columbia, North Carolina, and a construction permit for Station WGQR-FM, Channel 289A, Elizabethtown, North Carolina.

for Channel 287A at Wilmington,<sup>15</sup> and if a channel is substituted for Channel 288A at North Myrtle Beach. As described *infra*, we will grant Ogden Broadcasting's request to substitute Channel 290C3 for Channel 288A at North Myrtle Beach. The allotment of Channel 288C2 to Jacksonville does not require the substitution of Channel 299A for Channel 287A at Fair Bluff, thereby removing any conflict between Marine's proposal and the Bucksport proposal. Furthermore, the substitution of Channel 288C2 for Channel 288A at Jacksonville will permit the substitutions of Channel 286C2 for Channel 285A at Havelock and Channel 285C2 for Channel 285A at Hertford.<sup>16</sup> We believe that the public interest would be served by the requested substitutions at Havelock, Hertford and Jacksonville in order to provide each community with a wide-area FM transmission service. Therefore, we will adopt the proposals of Marine, Maranatha, and Musicradio, and modify the authorizations for Stations WXQR-FM, WKJE(FM), and WMSQ(FM), respectively, to reflect the modifications. This action removes one of two conflicts with the Bucksport proposal, discussed *infra*.

**Carolina Beach, Kure Beach, and Shallotte, North Carolina (RM-6765, RM-6782 and RM-7308)**

29. The next daisy chain concerns conflicting proposals to allot a new channel to Carolina Beach and to upgrade existing channels at Shallotte. We believe the public interest is best served by the allotment of a channel to Carolina Beach, the upgrading of a channel at Shallotte, and the allotment of an additional, equivalent class channel at Shallotte to accommodate additional expressions of interest for a channel at the community.

30. *Comments.* Spoeri, licensee of Station WCCA-FM, Shallotte, requests the substitution of Channel 252A for Channel 292A at Shallotte, the modification of its license for Station WCCA-FM accordingly, and the allotment of Channel 292A to Carolina Beach as that community's first local FM transmission service. Spoeri argues that the Shallotte substitution is necessary because its station and Station WSYN-FM, Channel 293C2, Georgetown, South

Carolina, suffer from mutual interference caused by propagation anomalies resulting from the stations' locations along the Atlantic coast. Spoeri claims that the Shallotte substitution will eliminate the interference. Hendrix Broadcasting, the sole proponent of the proposal to allot Channel 294A to Kure Beach, North Carolina, has withdrawn its expression of interest in the allotment.<sup>17</sup>

31. Jennings filed a timely counterproposal in response to the *Notice* setting forth Spoeri's proposal. Jennings proposes the substitution of Channel 233C3 for Channel 228A at Shallotte and the modification of its license for Station WDZD-FM accordingly, the allotment of Channel 252C3 to Shallotte to provide an equivalent class channel to accommodate any expressions of interest in the nonadjacent channel upgrade, and the substitution of Channel 300A for Channel 233A at Murrells Inlet, South Carolina, to accommodate the Shallotte Channel 233C3 substitution.<sup>18</sup> Jennings claims that its proposal would permit the allotment of Channel 292A to Carolina Beach, but would be mutually exclusive with Spoeri's request to substitute Channel 252A for Channel 292A at Shallotte. Jennings argues that its counterproposal is superior to Spoeri's proposal because its counterproposal would result in two Class C3 stations in Shallotte, whereas Spoeri's proposal would result in the continued operation of two Class A facilities in Shallotte. Furthermore, argues Jennings, Channel 279A could be substituted for Channel 292A at Shallotte instead of Channel 252A, thereby permitting adoption of Jennings' counterproposal. The Murrells Inlet substitution is mutually exclusive with the proposal of G&M to allot Channel 300C2 to Bucksport.

32. Spoeri replied, arguing that Jennings' counterproposal would not permit the allotment of Channel 292A to Carolina Beach, because the allotment would be short-spaced to Channel 292A at Shallotte.<sup>19</sup> In its reply, Jennings argues that its counterproposal is superior to Spoeri's proposal because it would enable Station WDZD-FM to expand its population coverage by 246.8% and its geographic coverage area by 266.8%.

<sup>15</sup> Site coordinates for Channel 283A in Wilmington are 34-16-15 and 77-57-23, which are the coordinates specified in the construction permit (BPH-880602NF) awarded to Beatriz Garcia Suarez de McCommas. Because the petition which resulted in the allotment of Channel 283A to Wilmington was filed prior to October 2, 1989, McCommas may avail herself of the provisions of Section 73.213(c)(1) of the Commission's Rules with respect to Station WCCG, Channel 283A, Hope Mill, North Carolina. Because the construction permit is conditioned on the outcome of this proceeding, Marine is not required to reimburse McCommas for the reasonable and prudent expenses incurred in substituting Channel 283A for Channel 287A. McCommas will be served with a copy of this *Report and Order*.

<sup>16</sup> This approach is preferable to allotting the Bucksport channel at coordinates different from those proposed by the Commission. Although using different coordinates may eliminate the mutual exclusivity between the Bucksport and Fair Bluff proposals, the Jacksonville and Havelock proposals would remain mutually exclusive.

Coordinates for Channel 286C2 at Havelock are 34-49-42 and 76-42-12, with a site restriction of 19 kilometers (11.8 miles) east to avoid a short-spacing to Station WDCG, Channel 286C, Durham, North Carolina. Coordinates for Channel 285C2 at Hert-

ford are 36-08-42 and 76-28-20, with a site restriction of 5 kilometers (3.1 miles) south to avoid a short-spacing to Station WMXN, Channel 287B, Norfolk, Virginia.

<sup>17</sup> As no other expressions of interest for the Kure Beach channel have been filed, we will dismiss the Kure Beach proposal.

<sup>18</sup> Jennings' filed additional pleadings which include a supplement to its expression of interest filed September 4, 1990, a September 13, 1990, response to comments filed by Larry Neal Willis, and a November 6, 1990, supplement. We will not consider the September 4 or September 13, 1990, pleadings as they were filed after the comment period to the Public Notice. We will consider the November 6, 1990, pleading only to the extent that Jennings expresses its willingness to modify its license to specify one of the three available channels at Shallotte.

<sup>19</sup> Spoeri filed additional pleadings which include an opposition to comments of Jennings, filed November 9, 1990, supplemental comments and a motion to accept filed November 20, 1990, and reply to opposition to supplemental comments filed December 13, 1990. All of these pleadings were filed well after any comment period established by the Commission for any phase of the proceeding and, therefore, will not be considered. Accordingly, the opposition of Audrey R. Morris to Spoeri's November 20, 1990, supplemental comments and Jennings' reply to Spoeri's opposition are moot.

33. In responsive comments, Spoeri argues that Jennings' request to allot Channel 252C3 at Shallotte constitutes a contingent proposal, as the only event which could result in the allotment of that channel is another expression of interest in the Class C3 allotment at Shallotte. Spoeri argues that Jennings' counterproposal to substitute Channel 300A for Channel 233A at Murrells Inlet, in order to allot Channel 233C3 to Shallotte, precludes the allotment of Channel 300C2 to Bucksport and the allotment of Channel 252C3 to Shallotte would preclude allotment of Channel 292A to Carolina Beach, because the Carolina Beach allotment is contingent upon the substitution of Channel 252A for Channel 292A at Shallotte. Adoption of Jennings' counterproposal would result in the denial of two proposals to provide first local transmission service in order to accommodate an upgrade of an existing channel. Therefore, argues Spoeri, its proposal and G&M's proposal must be preferred over Jennings' counterproposal. In the event that the Commission adopts Jennings' counterproposal, Spoeri expresses its interest in the Class C3 allotment at Shallotte, and commits to apply for and then build a facility on the Class C3 channel if allotted.<sup>20</sup> Spoeri argues that if no other party expresses an interest in the Class C3 channel, then the Commission should modify Spoeri's authorization to specify operation on Channel 252C3.

34. In responsive comments, Jennings again maintains that its counterproposal is superior to Spoeri's proposal. Jennings contends that Spoeri has failed to justify the substitution of Channel 252A for Channel 292A at Shallotte to avoid interference, and submits an engineering statement arguing that Spoeri's claims of interference are unsupported. Jennings notes that Channel 279A is available instead of Channel 252A if the Commission approves a substitution at Shallotte. Jennings argues that even if Spoeri could demonstrate interference, the Commission's rules protect licensees and permittees from interference solely to the extent specified in the Commission's distance separation requirements and the rules governing maximum power and antenna heights. Furthermore, Jennings maintains that the Shallotte substitution requested by Spoeri is not necessary to accommodate a Carolina Beach allotment, because Channel 294A is available for allotment to that community.

35. In responsive comments, Spoeri notes that it is the only party to express an interest in a Class C3 allotment at Shallotte. Therefore, argues Spoeri, the Commission can modify Spoeri's authorization for Station WCCA-FM to specify Channel 252C3 at Shallotte, thereby making Channel 292A available at Carolina Beach. Furthermore, Spoeri argues, a modification to Channel 279A would limit Station WCCA-FM to a three kilowatt facility.<sup>21</sup>

<sup>20</sup> Jennings' counterproposal was initially placed on public notice on March 14, 1990. Therefore, Spoeri's expression of interest in a Class C3 allotment at Shallotte, filed during the responsive reply comment period for Jennings' counterproposal, is timely. This is in contrast to Longwood Broadcasting's expression of interest in the Longwood allotment, which was untimely because it was not filed in response to the Longwood Notice released in 1989.

<sup>21</sup> Spoeri notes that it has filed an application to relocate Station WCCA-FM's transmitter site to permit operation of his station as a six kilowatt facility. See File No. BPH-891002IC.

<sup>22</sup> Willis argues that the Commission should have requested

36. Jennings disputes Spoeri's claim that its counterproposal is a contingent proposal. It argues that the counterproposal is not "invalid" because there was no interest in an additional Class C3 allotment in Shallotte when Jennings proposed the channel, as that channel was required in order to obtain a nonadjacent upgrade. Jennings argues that it selected Channel 252C3 as an alternate channel because it is the only available Class C3 channel in Shallotte, and not in order to create a conflict with Spoeri's proposal. Jennings argues that Spoeri is seeking a channel substitution in order to request an upgrade from Channel 252A to Channel 252C3. As evidence of this allegation, Jennings submits a copy of the asset purchase agreement between Beach and Spoeri in which the parties are obligated to take all steps reasonably necessary to upgrade Station WCCA-FM to Class C3 status. Jennings argues that the Commission cannot permit Spoeri to modify its channel to Channel 252C3 at this time, but must instead allot Channel 252C3 to Shallotte and accept competing applications for the channel. Finally, Jennings argues that Spoeri cannot now oppose the possibility that Channel 279A could be substituted for Channel 292A on the grounds that a station could not operate a six kilowatt facility on Channel 279A. Citing to *Memorandum Opinion and Order (Churubusco et al., Indiana)*, 5 FCC Rcd 916 (1990), Jennings argues that it is incumbent upon a petitioner to raise potential class upgrade concerns before the deadline for initial comments in an allotment proceeding. Jennings notes that Spoeri had not stated a desire for a six kilowatt Class A facility until it submitted its responsive comments in this proceeding.

37. After the close of the comment cycle, the Commission staff noted that it had erred in issuing the Public Notice of March 14, 1990, announcing Jennings' counterproposal. The Public Notice failed to request additional expressions of interest in the allotment of Channel 252C3 at Shallotte, North Carolina, as required by the Commission's Rules. Accordingly, the Commission issued a corrected Public Notice on August 16, 1990, providing a period in which additional expressions of interest could be filed. In response to the corrected Public Notice, Larry Neal Willis ("Willis") filed an expression of interest, stating that he would apply for any Class C3 channel that may be allotted to Shallotte.<sup>22</sup> Jennings reiterates its expression of interest in either Channel 233C3 or Channel 252C3.<sup>23</sup> Spoeri also reiterates its expression of interest, but objects to the issuance of the corrected Public Notice. Spoeri argues that the March 14, 1990, Public Notice provided adequate notice of a possible Channel 252C3 allotment, and that no Commission rule or policy requires specific solicitation of expressions of interest. Therefore, Spoeri argues, he is the only party to have timely expressed an interest in the channel.

expressions of interest in Channel 233C3 as well as Channel 252C3, since Spoeri has already expressed an interest in Channel 252C3. We accept Willis' expression of interest to include any equivalent class channel that may ultimately be allotted to Shallotte.

<sup>23</sup> In a supplement filed on November 6, 1990, Jennings notes that Channel 279C3 may be available for allotment to Shallotte, and states that it would accept a modification to that channel as well.

38. *Discussion.* Spoeri incorrectly asserts that issuance of the corrected Public Notice was unnecessary. Changes to the FM Table of Allotments are governed by the rules concerning notice and comment rule making proceedings. Specifically, Section 1.413(c) requires that notice of the proposed rule change include a description of the subjects and issues involved. This is accomplished by the issuance of a Notice of Proposed Rule Making describing the proposed amendment and seeking public comment. One of the central issues involved in a nonadjacent channel upgrade is whether a timely filed competing expression of interest for use of the channel has been filed and, if so, whether the expression can be accommodated by the allotment of an additional equivalent class channel. Where the petition is the subject of a Notice of Proposed Rule Making, the *Notice* informs the public of the opportunity to file such competing expressions of interest as comments. However, when a party requests a nonadjacent upgrade in a counterproposal, rather than issuing a Further Notice of Proposed Rule Making to provide the opportunity to file competing expressions of interest, it is the Commission's practice to explicitly state in the Public Notice announcing the counterproposal that expressions of interest in that channel may be filed. This action provides notice to all interested persons of the availability of the channel. Without such a statement, the station could not be upgraded to the nonadjacent channel during the course of the rule making because adequate notice to the public of the opportunity to file competing expressions of interest would not be provided. Therefore, it was necessary for the Commission to issue the corrected Public Notice.

39. As a result of Willis' expression of interest in a Class C3 allotment at Shallotte, the Commission staff performed an engineering analysis to see if there was an additional Class C3 channel available for allotment to Shallotte. The analysis determined that Channels 233C3, 252C3, and 279C3 were potentially available for allotment to the community. Channel 233C3, however, requires the channel substitution at Murrells Inlet from Channel 233A to Channel 300A,<sup>24</sup> and this substitution would conflict with the proposed allotment of Channel 300C2 to Bucksport, South Carolina, as that community's first local FM service. A Commission engineering analysis indicates that there are no alternate Class C2 channels available for allotment to Bucksport and no substitute Class A channels available for Murrells Inlet. Therefore, it is necessary to comparatively consider the proposals. Under the Commission's FM allotment priorities,<sup>25</sup> first local service is of a higher priority than the provision of a third local service to a community. Therefore, we will allot Channel

300C2 to Bucksport, *infra*, and deny the proposal to allot Channel 233C3 to Shallotte by substituting Channel 300A for Channel 233A at Murrells Inlet.

40. Spoeri's request for a first local FM allotment at Carolina Beach can be accommodated by the allotment of Channel 294A in lieu of Channel 292A as originally proposed. We note that his request to substitute Channel 252A for Channel 292A at Shallotte is mutually exclusive with the allotment of Channel 252C3 to Shallotte. Although Spoeri claims that Station WCCA-FM receives interference from Station WSYN-FM, Channel 293C2, Georgetown, South Carolina, we find that he has failed to provide a sufficiently compelling showing demonstrating that Station WCCA-FM is suffering interference within its protected 60 dBu contour. Section 73.209 states that FM stations are entitled to interference protection limited solely to that which arises from compliance with the minimum distance separation and maximum power and antenna height requirements. We note that both Stations WSYN-FM and WCCA-FM are in compliance with the Commission's minimum distance and power limitation requirements. The Commission does not routinely substitute one channel for another of the same class to solve alleged interference problems, when that substitution must be made at the expense of a more highly valued use of the spectrum. *See San Clemente, California*, 50 FR 8226 (All. Br. 1985), *recon. den.*, Mimeo No. 6281, released August 13, 1986, *rev. den.*, 2 FCC Rcd 2514 (1987). With the denial of Spoeri's request to substitute Channel 252A for Channel 292A at Shallotte, we are also able to provide Shallotte with two wide coverage area FM services, one of which will provide a third local service to the community. We will allot Channel 252C3 to Shallotte<sup>26</sup> as an additional equivalent class channel in light of the expressions of interest submitted by Spoeri and Willis. We will not modify Spoeri's license for Station WCCA-FM to specify operation on Channel 252C3, as requested, because a third Class C3 channel to accommodate the interest expressed by Willis cannot be allotted to Shallotte in this proceeding. *See Vero Beach, Florida*, 4 FCC Rcd 2184 (1989) (where only one of two licensees can be modified to an upgraded channel, the first party to identify the candidate channel and request the upgrade is entitled to be the sole applicant for that channel).

41. We believe the public interest would be served by the allotment of Channel 294A to Carolina Beach as that community's first local transmission service.<sup>27</sup> We also believe the public interest would be served by the substitution of Channel 279C3 for Channel 228A at Shallotte.

<sup>24</sup> Spoeri filed a proposed resolution that would substitute Channel 262A instead of Channel 300A at Murrells Inlet by substituting Channel 234A for Channel 262A at Pawley's Island, South Carolina. This proposal is not acceptable for consideration in this proceeding because the inclusion of a new community makes this an untimely filed counterproposal. Spoeri may file a new petition for rule making requesting the necessary changes at Murrells Inlet and Pawley's Island to accommodate an additional Class C3 allotment at Shallotte.

<sup>25</sup> The FM allotment priorities are (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. Priorities (2) and (3) are of co-equal weight. *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

<sup>26</sup> Site coordinates for Channel 252C3 at Shallotte are 33-55-49 and 78-11-54, with a site restriction of 17.6 kilometers (10.9 miles) east to avoid a short-spacing to the licensed site for Station WQSM-FM, Channel 251C1, Fayetteville, North Carolina.

<sup>27</sup> Coordinates for Channel 294A at Carolina Beach are 33-58-30 and 77-54-50, with a site restriction of 6.9 kilometers (4.3 miles) south to avoid a short-spacing to the licensed site of Station WSFL-FM, Channel 293C1, New Bern, North Carolina. Because the petition which resulted in the allotment of Channel 294A to Carolina Beach was filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's Rules with respect to Station WSFL-FM, Channel 293C1, New Bern, North Carolina.

and the modification of the authorization of Station WDZD-FM accordingly, in order to provide Shallotte with a wide area FM service.<sup>28</sup>

#### **Bucksport, South Carolina (RM-7307)**

42. *Comments.* G&M submitted a petition to allot Channel 300C2 to Bucksport, South Carolina. G&M notes that the allotment would provide Bucksport with its first local transmission service.

43. Jennings argues that Bucksport is not a community, claiming that Bucksport lacks the relevant indicia of community status. Jennings submits a letter from a member of the Horry County Council, the county in which Bucksport is located, stating that Bucksport is a rural area with no local government and no social, civic or recreational groups. Bucksport, claims the letter, contains a marina and restaurant, a grocery store, two bars, and several churches. Although equipment for volunteer firefighters is maintained in the area, a caller must call a Conway, South Carolina, telephone number. On the other hand, Spoeri argues that Bucksport is a Census Designated Place and, therefore, constitutes a community for allotment purposes.

44. In its responsive comments, Jennings submits additional evidence that Bucksport is not a community. Jennings submits a declaration from Elbert Neal Herring, former chairman of the Myrtle Beach Planning and Zoning Commission, who claims that Bucksport is served by Horry County services, that it is represented by a council member on the Horry County Council, and has no governing bodies. Herring claims that the Bucksport area is a rural area that is frequented by persons involved in water sports and/or outdoor activities, and the area is populated by "persons involved in the service industry related to Bucksport's specialized economy or other areas of Horry County."

45. In responsive comments, G&M states its continuing interest in the Bucksport allotment. G&M notes that Bucksport is a Census Designated Place (CDP) with a 1980 population of 1,125 persons and an estimated 1990 population of 2,000 persons. Bucksport has its own post office, volunteer fire department, civic/community center, several churches, a private airport, and a water and sewage system. G&M disputes Jennings' responsive comments claiming that Bucksport is not a community, arguing that the author of the letter submitted by Jennings as evidence that Bucksport is not a community lives in a community approximately 30 miles from Bucksport. G&M also argues that the Commission has allotted channels to communities with populations less than that of Bucksport.

46. *Discussion.* We believe that Bucksport constitutes a community for allotment purposes. Bucksport is listed in the 1980 U.S. Census as a Census Designated Place (CDP) with a population of 1,125 people. Designation as a CDP is generally sufficient to establish community status. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 101 (1982). Bucksport has a post office, fire department, churches, and a community center, as well as several businesses. These factors provide further evidence of community status. See *Memorandum Opinion and Order (Semora, North Carolina)*, 5 FCC Rcd at 935. Jennings fails to offer evidence sufficient to rebut a determination that Bucksport is a community. Even though Bucksport may lack a separate local government, an area need not exhibit each indicia of community status to be a community. *Id.* Therefore, we believe the public interest would be served by the allotment of Channel 300C2 to Bucksport as that community's first local transmission service.<sup>29</sup>

#### **North Myrtle Beach, St. Stephen and Loris, South Carolina (RM-7305), Georgetown, South Carolina (RM-6836) and Darlington, South Carolina (RM-7306)**

47. Finally, we turn to the remaining daisy chain of proposals. We must comparatively consider conflicting proposals to allot a channel to Georgetown, thereby providing that community with a fourth local transmission service, or to upgrade existing channels at North Myrtle Beach and Darlington. We determine that the public interest is better served by the upgrading of channels at North Myrtle Beach and Darlington, as this will provide a greater net reception service gain than would allotment of an additional service to Georgetown.

48. Three proposals remain in conflict. Ogden, licensee of Station WNMB(FM), Channel 288A, North Myrtle Beach, South Carolina, requests the substitution of Channel 290C3 for Channel 288A at North Myrtle Beach and the modification of its authorization accordingly. To accommodate the upgrade, Ogden requests the substitution of Channel 291A for Channel 290A at St. Stephen, South Carolina, and Channel 235A for Channel 290A at Loris, South Carolina. Ogden stated that it would reimburse the permittee for Channel 290A at St. Stephen for reasonable and necessary expenses related to the channel substitution, if adopted.<sup>30</sup> RJM requests the allotment of Channel 289A to Georgetown, South Carolina, as that community's fourth local transmission service. The Georgetown proposal is mutually exclusive with the North Myrtle Beach proposal. RCLP, licensee of Station WMWG-FM, Channel 288A, Darlington, South Carolina, requests the substitution of Channel 288C3 for Channel 288A at Darlington and the modification of its authorization accordingly. The Darlington proposal is mutually exclusive with Channel

<sup>28</sup> Coordinates for Channel 279C3 at Shallotte are 33-58-51 and 78-22-24, with a site restriction of 1.3 kilometers (0.8 miles) northeast to avoid a short-spacing to Station WYAV, Channel 281C1, Conway, South Carolina, and Station WZXS, Channel 280A, Topsail Beach, North Carolina. Because the petition which resulted in the allotment of Channel 279C3 was filed prior to October 2, 1989, Jennings may avail itself of the provisions of Section 73.213(c)(1) of the Commission's Rules with respect to the reference coordinates for Channel 280A at Topsail Beach.

<sup>29</sup> Site coordinates for Channel 300C2 at Bucksport are

33-38-45 and 79-08-12, with a site restriction of 3.2 kilometers (2.0 miles) southwest to avoid a short-spacing to the licensed site for Station WNCT-FM, Channel 300C, Greenville, North Carolina.

<sup>30</sup> The Commission issued an *Order to Show Cause*, 5 FCC Rcd 5358 (1990), to George Wells, permittee of Station WTUA-FM, Channel 290A, St. Stephen, why his permit should not be modified to specify operation on Channel 291A. Wells filed no response to the *Order to Show Cause*. Therefore, consistent with Section 1.87 of the Commission's Rules, Wells is deemed to have consented to the proposed modification.

288A at North Myrtle Beach, and, therefore, is contingent upon the substitution of Channel 290C3 for Channel 288A at North Myrtle Beach.

49. *Comments.* In responsive comments, RJM notes that the Commission has released a *Notice of Proposed Rule Making* (MM Docket No. 89-496), 4 FCC Rcd 8117 (All. Br. 1989) proposing to reallocate a channel from Georgetown to Myrtle Beach. RJM argues that in light of this proposal, the public interest would be served by allotting Channel 289A to Georgetown as a "replacement" channel.<sup>31</sup> RJM claims that the North Myrtle Beach and the Georgetown proposals must be decided under the Commission's fourth FM allotment priority of other public interest matters. Under such an analysis, argues RJM, the potential loss of diversification of local broadcast voices at Georgetown constitutes a greater public interest concern than an upgrade of an existing facility at North Myrtle Beach.

50. In responsive comments, RCLP argues that granting the North Myrtle Beach and Darlington upgrade proposals would be a more efficient use of the spectrum than allotting an additional service to Georgetown. RCLP states that if Channel 288C3 is substituted for Channel 288A at Darlington, it will file an application for a construction permit for the new channel on a timely basis.

51. Ogden submits responsive comments supporting its North Myrtle Beach proposal and RCLP's Darlington proposal. Ogden notes that the North Myrtle Beach and Darlington upgrades would provide expanded coverage for the only full-time stations in their respective communities of license, whereas RJM's proposal would result only in the allotment of an additional channel to Georgetown. Ogden argues that a comparison of area and population gains resulting from the proposed allotments indicates that the North Myrtle Beach and Darlington upgrades would provide additional service to 168,096 persons, whereas the Georgetown allotment would provide additional service to only 33,033 persons.

52. *Discussion.* The North Myrtle Beach, Darlington, and Georgetown proposals would not provide first or second reception service, or first local transmission service, to their respective proposed communities of license. Therefore, these proposals must be examined pursuant to

the fourth FM allotment criteria of "other public interest matters." As commenters have noted, the North Myrtle Beach and Darlington proposals would permit an expansion of existing service, whereas the Georgetown proposal would provide a fourth local FM transmission service. In order to determine which proposal would best serve the public interest, we compare the extended service area of each proposed station. *See Memorandum Opinion and Order (Chippewa Falls, Wisconsin and Red Wing, Minnesota)*, 4 FCC Rcd 6323 (Pol. and Rules Div. 1989). The Commission staff performed an engineering analysis to determine the total gain area of each proposal. This analysis determined that a six kilowatt Class A channel at Georgetown would provide additional service to approximately 36,000 persons, whereas the substitution of Channel 290C3 for Channel 288A at North Myrtle Beach would provide additional service to 47,487 persons, or 24.2% more persons than the Georgetown allotment. The substitution of Channel 288C3 for Channel 288A at Darlington, which would be precluded by adoption of RJM's proposal, would provide additional service to 48,826 persons. Therefore, the net gain resulting from adoption of the North Myrtle Beach and Darlington proposals is 96,313 persons, approximately 267% greater than the gain that would result from adoption of the Georgetown proposal.<sup>32</sup> The Georgetown proposal, therefore, will be denied.

53. We believe the public interest would be served by the channel substitutions proposed at North Myrtle Beach and Darlington, as each substitution would provide a wide area service to the respective communities. Channel 290C3 can be substituted for Channel 288A at North Myrtle Beach,<sup>33</sup> and "Channel 288C3 can be substituted for Channel 288A at Darlington,"<sup>34</sup> in compliance with the Commission's minimum distance separation rules. We will also substitute Channel 291A for Channel 290A at St. Stephen,<sup>35</sup> and Channel 235A for Channel 290A at Loris,<sup>36</sup> to accommodate the North Myrtle Beach substitution.

<sup>31</sup> This proposal has been dismissed. *See Report and Order* (MM Docket 89-496), 6 FCC Rcd 385 (All. Br. 1991). Therefore, RJM's proposal would not provide a "replacement" channel.

<sup>32</sup> Furthermore, adoption of the North Myrtle Beach proposal would permit the substitutions of Channel 288C2 for Channel 288A at Jacksonville, Channel 286C2 for Channel 285A at Havelock, and Channel 285C2 for Channel 285A at Hertford, as discussed *supra*. A Commission staff analysis indicates that the population gains resulting from these substitutions are 84,971 persons at Jacksonville, 43,982 persons at Havelock, and 68,466 persons at Hertford, or a total of 197,419 persons. Adding this total to the 96,313 person population gain increase in North Myrtle Beach and Darlington results in a total of 293,732 additional persons served by the five proposals that can be adopted if the Georgetown allotment is rejected.

<sup>33</sup> Site coordinates for Channel 290C3 at North Myrtle Beach are 33-50-00 and 78-45-39, with a site restriction of 7.2 kilometers (4.5 miles) west to avoid a short-spacing to Station WSYN-FM, Channel 293C2, Georgetown, South Carolina.

<sup>34</sup> Site coordinates for Channel 288C3 at Darlington are 34-20-40 and 80-01-02, with a site restriction of 14.5 kilometers (9.0 miles) west to avoid a short-spacing to vacant but applied for Channel 287A, Fair Bluff, North Carolina, and the applica-

tion for that channel. Because the petition which resulted in the allotment of Channel 288C3 at Darlington was filed prior to October 2, 1989, RCLP will be permitted to avail itself of the provisions of Section 73.213(c)(1) of the Commission's Rules with respect to Station WJYQ, Channel 288A, Moncks Corner, South Carolina, and to the allotment and pending applications for Channel 287A at Fair Bluff, North Carolina.

<sup>35</sup> Site coordinates for Channel 291A at St. Stephen are 33-29-36 and 79-53-21, the coordinates for the construction permit for Station WTUA-FM, Channel 290A, St. Stephen.

<sup>36</sup> Site coordinates for Channel 235A at Loris are 34-05-26 and 78-52-59, with a site restriction of 2.5 kilometers (1.5 miles) north to avoid a short-spacing to a construction permit for Station WSSX-FM, Channel 236C, Charleston, South Carolina. We note that after Ogden submitted its proposal, the Commission granted a construction permit to Robert L. Rabon ("Rabon") (BPH-870918MA) for Channel 290A at Loris contingent on the outcome of this proceeding. Because the construction permit is contingent on the outcome of this proceeding, Ogden is not required to reimburse Rabon for the reasonable and prudent expenses incurred in substituting Channel 235A for Channel 290A. Rabon will be served with a copy of this *Report and Order*.

## ORDERING CLAUSES

54. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 2, 1992**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

| City                                  | Channel Number           |
|---------------------------------------|--------------------------|
| Carolina Beach,<br>North Carolina     | 294A                     |
| Havelock,<br>North Carolina           | 286C2                    |
| Hertford,<br>North Carolina           | 285C2                    |
| Jacksonville,<br>North Carolina       | 222C2, 254C1, 288C2      |
| Shallotte,<br>North Carolina          | 252C3, 279C3, 292A       |
| Wilmington,<br>North Carolina         | 247C, 267C2, 274C1, 283A |
| Bucksport,<br>South Carolina          | 300C2                    |
| Darlington,<br>South Carolina         | 288C3                    |
| Loris,<br>South Carolina              | 235A                     |
| North Myrtle Beach,<br>South Carolina | 290C3                    |
| St. Stephen,<br>South Carolina        | 291A                     |
| Surfside Beach,<br>South Carolina     | 276C3                    |

55. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Musicradio of North Carolina, Inc. for Station WMSQ(FM), Havelock, North Carolina, IS MODIFIED, to specify operation on Channel 286C2 in lieu of Channel 285A, the construction permit of Maranatha Broadcasting Company, Inc. for Station WKJE(FM), Hertford, North Carolina, IS MODIFIED to specify operation on channel 285C2 in lieu of Channel 285A, the license of Marine Broadcasting Company for Station WXOR-FM, Jacksonville, North Carolina, IS MODIFIED to specify operation on Channel 288C2 in lieu of Channel 288A, the license of Jennings Communications Corporation for Station WDZD-FM, Shallotte, North Carolina, IS MODIFIED to specify operation on Channel 279C3 in lieu of Channel 228A, the license of Radio Carolina Limited Partnership for Station WDAF-FM, Darlington, South Carolina, IS MODIFIED to specify operation on Channel 288C3 in lieu of Channel 288A, the license of Ogden Broadcasting of South Carolina, Inc. for Station WNMB(FM), North Myrtle Beach, South Carolina, IS MODIFIED to specify operation on Channel 290C3 in lieu of Channel 288A, the license of Jones, Eastern of the Grand Strand, Inc. for Station WYAK(FM),

Surfside Beach, South Carolina, IS MODIFIED to specify operation on Channel 276C3 in lieu of Channel 276A, subject to the following conditions:

(a) Within 90 days of the effective date, the licensee/permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

56. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permits of Robert L. Rabon for Channel 290A, Loris, South Carolina, George Wells for Station WTUA-FM, St. Stephen, South Carolina, and Beatriz Garcia Suarez de McCommas for Channel 287A at Wilmington, North Carolina, ARE MODIFIED, to specify operation on Channel 235A in lieu of Channel 290A at Loris, Channel 291A in lieu of Channel 290A at St. Stephen, and Channel 283A in lieu of Channel 287A at Wilmington, respectively, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Rabon's construction permit, BPH-870918MA, Station WTUA-FM's construction permit, BPH-870918NC, or McCommas' construction permit (BPH-880602NF) except the channel as specified above. Any other changes, except those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with construction permits BPH-870918MA, BPH-870918NC, and BPH-880602NF, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

57. The window period for filing applications for Channel 294A at Carolina Beach, North Carolina, Channel 254C3 at Shallotte, North Carolina, and Channel 300C2 at Bucksport, South Carolina, will open on **March 3, 1992** and close on **April 2, 1992**.

58. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the permittees for Channel 287A at Wilmington, North Carolina, and Channel 290A at Loris, South Carolina, as follows: Beatriz Garcia Suarez de McCommas, 2495 Greenwell Court, Wilmington, North Carolina 28403 (BPH-880602NF), and Robert L. Rabon, P. O. Box 437, Conway, South Carolina 29526 (BPH-870918MA).

59. IT IS FURTHER ORDERED, That the late filed expression of interest filed by Longwood Communications IS DISMISSED.

60. IT IS FURTHER ORDERED, That the petition for rule making to allot Channel 289A to Georgetown, South Carolina, filed by RJM Broadcasting (RM-6836), IS DENIED.

61. IT IS FURTHER ORDERED, That the petition for rule making to allot Channel 292A to Stallville, South Carolina, filed by RJM Broadcasting (RM-6840), IS DENIED.

62. IT IS FURTHER ORDERED, That the petition for rule making to allot Channel 294A to Kure Beach, North Carolina filed by Hendrix Broadcasting (RM-6782), IS DISMISSED.

63. IT IS FURTHER ORDERED, That the petition for rule making to allot Channel 292A to Carolina Beach, North Carolina, and substitute Channel 252A for Channel 292A at Shallotte, North Carolina, filed by Beach Broadcasting of North Carolina, Inc. (RM-6765), IS GRANTED IN PART AND DENIED IN PART.

64. IT IS FURTHER ORDERED, That the Supplemental Comments of Muirfield Broadcasting, Inc. to allot Channel 288C3 to Jacksonville, North Carolina, IS DISMISSED.

65. IT IS FURTHER ORDERED, That the petitions for reconsideration of the Consolidation Order filed by Musicradio of North Carolina, Inc. and Maranatha Broadcasting Company, Inc., ARE DISMISSED.

66. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

67. For further information concerning this proceeding, contact Michael Ruger or Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Ogden Broadcasting of South Carolina, Inc. (Ogden)

Pro Media (Pro)

Radio Carolina Limited Partnership (RCLP)

RJM Broadcasting (RJM)

Larry Neal Willis (Willis)

#### FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy  
Secretary

#### APPENDIX

##### Parties filing pleadings in response to the Consolidation Order

Beach Broadcasting of North Carolina, Inc. and Todd Spoeri (Spoeri)

G&M Communications (G&M)

Great Southern Media (GSM)

Hendrix Broadcasting (Hendrix)

Jennings Communications Corporation (Jennings)

Jones, Eastern of the Grand Strand, Inc. (Jones)

Longwood Broadcasting

Maranatha Broadcasting Company, Inc. (Maranatha)

Marine Broadcasting Corporation (Marine)

Muirfield Broadcasting, Inc. (Muirfield)

Musicradio of North Carolina, Inc. (Musicradio)